IN THE KIRIBATI COURT OF APPEAL	]	**Land Appeal No: 2025-01389**
LAND JURISDICTION	]	
HELD AT BETIO	]	
REPUBLIC OF KIRIBATI	]	

BETWEEN:	BEIATAAKE OREA MTMM	**APPELLANT**
AND:	TAUNGARE TAMOAIETA MTMM	**RESPONDENT**

Before: Nelson, JA
Khan, JA
Amten, JA

Date of hearing: *1 July 2025*
Date of decision: *7 July 2025*

Counsels: *Mr Banuera Berina* for the Appellants
Ms Kiata Ariera for the Respondents

JUDGMENT OF THE COURT

Background

[1]. In CNB 1/2000 dated 04 Jan 2000, the Magistrates' Court dealt with a claim by Orea Kaiuea, the father of the appellants to occupy the land Teabanimate 791-a in Teaoraereke belonging to Matiera Amitong and his brothers. Matiera Amitong

is the father of the respondents. As this decision is at the heart of this matter, it is reproduced in full:

" Kiribati Magistrate Court

Before SM Tabakitoa

4th Jan 2000

CNB 1/2000

MATIERA AMITONG

V

OREA KAIUEA

MATTER: To allow the occupation of Orea Kaiuea over the land plot in Teaoraereke which is Teabanimate 791a.

DSOB: Matiera Amitong m/67 of Tarawa

I agree that Orea shall reside and dwell in Teaoraereke over the land Teabanimate 791a. The respondent has been allowing Tamoaieta to reside on the land and when he died, we continue in allowing Orea to reside with us until these days.

And that is to the lagoon side of the main road, and its eastern side is leased by the government.

That is all.

Xxd by Orea – Nil

Court:

Q: Whose name is registered on this land?

A: Our names, Matiera, Kataotao and Tamoaieta.

Q: Is there a consent from your other brothers who did not turn up?

A: (words is blur)… and when he died, we continue what he did. Kataotao also conceded.

Q: What do you imply when you allow for his residing plot there, shall his name be registered?

A: No, he shall only reside there.

Q: and how long does he need to be there?

A: That is up to him

Q: Nil.

Orea: I have nothing to say, I just want to express my gratitude to Matiera Amitong.

Decision:

This application is hereby granted and the Orea Kaiuea to reside on Teabanimate 791a is allowed and that is on the lagoon side according to what Matiera Amitong approve on behalf of himself and on behalf of his brothers who did not turn up in court.

Signed

SM Nakau

dated this 4th Jan 2000"

[2]. Orea has now passed on and the respondents in Bailan 315/20 brought proceedings to evict the appellants on the basis that what Orea was given was only license to occupy, revocable on reasonable notice from only the landowners.

[3]. At the hearing of Bailan 315/20, there was some suggestion that Orea had paid money to the eldest of Matiera's brothers for purchase of the land but this would not be verified and properly rejected by the Court as hearsay.

[4]. The Magistrates' Court in its judgment dated 17/06/21 in Bailan 315/20 found:

> *"It is clear that the land was given to Orea and to be reverted back when he no longer needs it. Now that he has died, this mean he no longer need this land anymore.*
>
> *It is clear that if Orea had been wanted this land to remain with him he would have had proceeded to register his name so that the land would remain with his issues as owners of this land."*

[5]. The Court relied on the authority of ***Tebeia v Aviu [2008] KICA 3*** also a case involving a license to occupy where the Court of Appeal in issuing an eviction order stated:

> *"On our analysis of the evidence, the appellants' family asked the respondent to leave in 1993. At that point his existing license to occupy was no doubt terminated and he became, for however short a period, a trespasser.*
>
> *However when the respondent declined to go, the appellants' family allowed him to remain for another 14 years. In some circumstances that lack of positive action to evict might not have affected the respondent's status as trespasser. But the evidence is that throughout that period the appellants' family was sharing the property with the*

respondent. Interaction between them was inevitable. Yet there is no suggestion that at any point during that period the family was taking verbal, physical or legal steps to remove him. It was only in 2007 that the appellants moved to evict the respondent by bringing proceedings in the Magistrates' Court for that purpose.

It is clear from the evidence that for a long time the appellants would have preferred that the respondent depart. What matters, however, is what was actually communicated between them. It appears that what prompted the appellants to take action was an overcrowding problem of recent origin. As Wateti Tebeia said to the Magistrate in 2007, "Now at this time, that we are having a lot of people, we would want our land back."

We think that the proper inference to be that from approximately 1993 to 2007 the appellants were allowing the respondents to remain on the property and that this was the message he would have gleaned from their course of conduct. In legal terms they were creating and perpetuating a license to occupy. A license to occupy is legally effective whether motivated by monetary payment, sympathy, or apathy. The license did not come to an end until the appellants terminated it by commencing proceedings for eviction. At that point the respondent again became a trespasser susceptible to eviction. It follows that the appellants' relevant cause of action to evict the respondent did not accrue until termination of his license to occupy in 2007."

[6]. On appeal to the High Court alleging that the Magistrates' Court had misinterpreted CNB 1/2000, the High Court in dismissing the appeal applied ***Tebeia v Aviu [2008] KICA 3*** and said:

"We have analyzed the parties' arguments and must agree with the Respondent. The judgment mentioned that Orea could occupy the land indefinitely for as long as he wanted. But the minutes clearly stated that the intention was not for him to be registered on the land. This means that he was given only a license to occupy, and the court was merely confirming this agreement. The Appellant did not refer to any law in the Native Lands Ordinance to support that they could live on the land indefinitely using the permission given to their father nor any support that the decision of CNB 1/2000 has the legal effect of turning a license to occupy to a permanent permit to occupy the land from generation to generation."

The Appeal

[7]. The Appellants now appeal to this Court arguing that:

"1. The High Court erred in law in finding that the decision in CNB 1/2000 amounted only to a license to occupy being granted to Orea in that properly read the decision in CNB 1/2000 created on the land of the Respondents an encumbrance acknowledging that Orea Kaiuea, the father of the Appellants, had a legal right to occupy the lagoon side of the Respondents' land especially as in Kiribati a license to occupy does not require the approval of the court.

2. The High Court erred in law in referring to the minutes of the court in interpreting a judgment of the court that was clear and unambiguous and in failing to consider not only the judgment itself and the conduct of the parties after the judgment especially as-

(a) There is evidence before the court about the Respondents' predecessor in title encouraging the

Appellants to build permanent house or semi-permanent houses on the land

(b) There is also evidence of the Appellants actually believing that they had a right to occupy the land.

Analysis

[8]. Several critical points were accepted by the appellants' counsel in the course of arguing the appeal:

(i) There is no reference in CNB 1/2000 to the license to occupy being for "Orea and his heir" or words to that effect.

(ii) There is nothing in the formal law of Kiribati allowing for the creation of "easements" or "encumbrances" over customary land. Counsel was unable to provide any authorities in support of his argument.

(iii) Orea and Matiera were not blood relatives, only friends.

(iv) Matiera could easily have said the license to occupy was for "Orea and his heirs/successors." Those were not his words.

Decision

[9]. After assessing the evidence and the various judgments of the Courts, we conclude as follows:

1. The license originally granted to Orea by Matiera and his brothers was a personal license to occupy for as long as he wished. That is clear from the proceedings of CNB 1/2000. In the words of Matiera:

"Q: Shall his name be registered?
A: No, he shall only reside there
Q: And how long does he need to be there?
A: That is up to him"

2. There was no intent that upon the death or sooner vacation by Orea of the property that the license was transferrable to his heirs or anyone else.

3. The fact that Matiera may have acquiesced in or encouraged the appellants to construct semi-permanent structures on the land does not in fact or law operate to convert the personal license to occupy granted to Orea into something more. It may however pave the way for a claim of unjust enrichment but such has not been made.

4. The learned Chief Justice correctly applied the relevant legal principles, the appeal is dismissed.

5. Costs are awarded to the Respondents to be taxed if not agreed upon.

Nelson, JA

Khan, JA

Amten, JA